

AMERICAN MINERAL LEASING, INC.

IBLA 84-417

Decided November 15, 1984

Appeal from decision of Alaska State Office, Bureau of Land Management, cancelling noncompetitive oil and gas lease AA-48861.

Affirmed in part, set aside in part, and remanded.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases:
First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive
Leases

BLM must cancel a noncompetitive oil and gas lease erroneously issued to a party other than the first-qualified offeror, where the lease was issued while that offeror's prior lease offer was pending on appeal before the Board and the offeror was ultimately determined to be qualified to receive a lease.

APPEARANCES: Eddie T. Rice, Chairman of the Board, American Mineral Leasing, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

American Mineral Leasing, Inc., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 8, 1984, cancelling noncompetitive oil and gas lease AA-48861.

On July 26, 1983, appellant filed a noncompetitive oil and gas lease offer for 3,840 acres of land situated in secs. 10 through 15, T. 9 N., R. 6 W., Copper River Meridian, Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Effective November 1, 1983, BLM issued noncompetitive oil and gas lease AA-48861 to appellant pursuant to its lease offer.

This case also involves conflicting noncompetitive oil and gas lease offer AA-48576 filed on March 7, 1983, by Gian R. Cassarino embracing the same land sought by appellant. By decision dated March 28, 1983, BLM rejected Cassarino's lease offer because the offeror had failed to submit five signed copies of the offer in accordance with 43 CFR 3111.1-1(a) (1982).

On April 8, 1983, Cassarino filed five signed copies of the lease offer and a notice of appeal with respect to the March 1983 BLM decision. In Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984), the Board concluded that BLM had properly rejected Cassarino's lease offer for failure to submit five signed copies in accordance with Departmental regulation. However, in view of Cassarino's reliance on the longstanding practice of allowing certain deficiencies in a lease offer to be cured after rejection by BLM, with priority as of the date of curing, the Board held that Cassarino could take advantage of that practice and that the rule announced in Cassarino overruling that practice would be given prospective effect only. Accordingly, we instructed BLM "to consider whether, under the circumstances [Cassarino's] lease offer may be deemed, as of April 8, 1983, to be a perfected lease offer, and entitled to priority as of that date." Id. at 248, 91 I.D. at 13.

In its March 1984 decision, BLM held that Cassarino's lease offer had been perfected as of April 8, 1983, and that because his lease offer was filed prior to appellant's, it was proper to cancel appellant's lease as "erroneously issued," citing Boesche v. Udall, 373 U.S. 472 (1963).

In its statement of reasons for appeal, appellant contends that Cassarino's lease offer was not entitled to priority as of April 8, 1983, and that, had the Board been aware of the outstanding lease held by appellant when it decided Cassarino, it would not have allowed Cassarino to cure the defect in his offer. Appellant states that because of appellant's lease the Cassarino decision should be given retroactive effect. Appellant also argues that BLM cannot cancel appellant's lease pursuant to 43 CFR 3110.3(b) where Cassarino is not "qualified to receive a lease." Appellant also contends that BLM cannot adversely affect the interest of certain bona fide purchasers of interests in its lease which it has created by several assignments, which have yet to be approved by BLM. Appellant states that it was not aware that Cassarino's lease offer had not been finally rejected by the Department until the March 8, 1984, BLM decision, and it relied on the validity of the lease issued to it when assigning lease interests.

[1] Appellant's first contention is that Cassarino was incorrectly decided by the Board. Appellant does not dispute the conclusion by the Board in Cassarino that BLM properly rejected Cassarino's lease offer for failure to submit five signed copies of the offer. Rather, appellant argues that the Board should not have permitted Cassarino to cure the defect in his offer. In Cassarino, we recognized that failure to submit five signed copies of a lease offer is not a curable defect specifically listed under 43 CFR 3111.1-1(e) (1982). Nevertheless, we held that the Board had long permitted this other defect, not specifically listed in 43 CFR 3111.1-1(e) (1982), to be cured with "priority from the date the filing is perfected in conformity with Departmental requirements. See, e.g., Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976), aff'g Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); Bear Creek Corp., 5 IBLA 202 (1972)." Gian R. Cassarino, supra at 244-45, 91 I.D. at 11. We affirm our holding in Cassarino. Moreover, as we said in Cassarino, our decision not to permit future offerors to cure such defects after rejection of their offers, thus avoiding the necessity of filing entirely new offers, will be given prospective effect. Cassarino was afforded the benefit of the prior practice because of his reliance thereon. See also Victor M. Onet, Jr. (On Reconsideration), 82 IBLA 241 (1984). We adhere to that position herein. The fact that a lease

had been erroneously issued to appellant at a time when Cassarino's lease offer for the same land was still pending before the Department does not affect our conclusion as to the correctness of our decision in Cassarino.

Appellant also challenges BLM's authority to cancel appellant's lease. The applicable regulation, 43 CFR 3110.3(b), provides that: "No lease shall be issued before final action has been taken on any prior offer to lease the lands * * *. If a lease is issued before final action, it shall be cancelled, if the prior offeror is qualified to receive a lease * * *." (Emphasis added.) See A. W. Rutter, Jr., 74 IBLA 345 (1983). Appellant contends that the regulation is not applicable because Cassarino is not "qualified to receive a lease." We disagree. In accordance with the practice of BLM and this Board in effect at the time when Cassarino filed the five signed copies of his lease offer Cassarino became fully qualified under the Mineral Leasing Act and its implementing regulations to receive a noncompetitive oil and gas lease. ^{1/} Thus, BLM was entitled to cancel appellant's lease pursuant to 43 CFR 3110.3(b). Moreover, it is well established that BLM may cancel a lease which is issued in violation of a statutory or regulatory provision. Such a lease is "void from its inception," and its cancellation does not unjustifiably abrogate the property rights inherent in an oil and gas lease. Bernard Kosik, 70 IBLA 373, 374 (1983); see also Boesche v. Udall, *supra*; Winkler v. Andrus, 614 F.2d 707 (10th Cir. 1980); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). In addition, BLM may cancel a lease pursuant to 43 CFR 3110.3(b) regardless of whether the lessee knew of the prior lease offer at the time it filed its lease offer.

The more difficult question is whether assignment by appellant has created bona fide purchasers, whose interests must be protected under 30 U.S.C. § 184(h)(2) (1982), despite the cancellation of appellant's interest in the lease. The record indicates that appellant filed assignments of the record title interest in portions of its lease to Eddie T. Rice and Michael P. Ames, respectively, on February 24 and January 3, 1984, with requests for approval by BLM. The assignments were dated December 30, 1983 (Rice), and December 22, 1983 (Ames). Appellant states that neither it nor its assignees were aware that Cassarino's offer was on appeal until receipt of the March 1984 BLM decision cancelling appellant's lease.

In order to qualify for protection as a bona fide purchaser, an assignee must have acquired his interest in good faith, for valuable consideration, and without notice of violation of law or Departmental regulation. Winkler v. Andrus, *supra* at 711; Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966).

The question presented by the facts in the present case is whether appellant's assignees are deemed to have had knowledge of Cassarino's pending prior lease offer at the time of the respective assignments. If they had knowledge, they cannot qualify as bona fide purchasers because they would be deemed to know that the lease was improperly issued to appellant. If they had no knowledge, they would qualify as bona fide purchasers.

^{1/} Had Cassarino not relied upon past practice he could have filed a new offer at the time of filing the additional copies of the original form, thus giving him priority, without a question as to the proper application of the holding in Gian R. Cassarino, *supra*.

In Winkler v. Andrus, supra at 713, the court stated that: "[A]ssignees of federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment." See 43 CFR 3108.4. Moreover, an assignee may be deemed to have notice of a superior right where the facts known to an assignee are "sufficient to put an ordinarily prudent man on inquiry, an inquiry which, if followed with reasonable diligence, would lead to discovery of defects in title affecting the property." Id. at 712; see also Rosita Trujillo, 77 IBLA 35 (1983); A. W. Rutter, Jr., supra.

Because of the paucity of evidence in the record on the question of bona fide purchasers and because BLM has not had an opportunity to adjudicate the qualifications of appellant's assignees as bona fide purchasers, we find it necessary to remand the case to BLM for that purpose.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to the interest retained by appellant, set aside with respect to those interests assigned, and the case is remanded to BLM for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge